IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.2401 of 2007

The State of Maharashtra Applicant

Vs.

Dr.Bharat Ramchandra Thakar Respondent

Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.

October 15, 2007.

P.C.

1. Heard Mr.Pol, the learned APP. This is an application seeking leave to appeal under Section 378(3) of Cr.P.C. against the order of acquittal passed by the learned Ad-hoc Addl. Sessions Judge - V at Kolhapur on 22/3/2007 in Sessions Case No.11 of 2006.

2. As per the prosecution the incident had taken place on 17/11/2004 in which the accused - the present respondent was alleged to have abused the complaint - PW 3 - Suresh Gaikwad on his caste saying, "Khatakachi Jat Lai Madarchot & Nalayak Aahe. Hi Jat Saral Eaiknar Nahi."

3. Surprisingly the FIR was filed two and half months later on 29/1/2005. In support of this delay caused, it was contended that the complainant first filed an application to obtain a caste certificate and thereafter only he approached the police station on 29/1/2005 on the basis of which crime bearing No.2 of 2005 came to be registered with the Rajarampuri Police Station against the accused under Section 7(1)(d) of the Pretection of Civil Rights Act, 1955 and Sections 323, 506 read with Section 34 of IPC On 16/5/2005 PSI Chougule submitted a report to the JMFC and applied for additional charges to be framed under Section 3(1)(x) and 3(1)(vi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The accused was arrested on 16/5/2005 and identification parade was conducted on 14/7/2005 because as per the complainant he had met four persons and one of them had uttered the abuses as quoted hereinabove. The prosecution examined in all eight witnesses. PW 1 - Appaji Lingu Haladikar, PW 2 - Dilip Joshi were the panch witnesses and PW 5 - Sattappa Kamble claimed to be an eye witness along with PW 3. As per their version on 17/11/2004 at about 10 p.m. they had gone to hotel Prakash and four unknown persons came there and one of them asked

the complainant to withdraw the case filed against the doctor and on that count a scuffle took place between them. One of the said persons caught hold of the collar of the complainant and abused him in the words as quoted hereinabove and thereafter all the four persons disappeared. They also stated that they had gone to hotel Prakash for pan in pan shop. The complainant PW 3 himself admitted in his cross examination that Rajarampuri Police Station was at a distance of one furlong from Parvati Theatre and four unknown persons met them at 500 to 600 ft. from the said theatre. As per them the distance between Prakash Hotel and Parvati Theatre was about 500 to 600 feet. The incident had taken place in the night and the identification parade had taken place after about eight to nine months. The trial Court considered the testimony of PW 6 - Bipin Hasabnis, PW 7 - Dr.Sudhakar Pathare, Dy.S.P. and PW 8 - Babasaheb Sangale, PSI and recorded the finding that the charge was not proved. The trial Court specifically referred to the depositions of PW 3 - Suresh Gaikwad, the complainant and noticed that he had not stated that the person who caught hold of his collar and had a scuffle with him was the same person who abused him and on the other hand PW 5 - Sattappa

Kamble who identified the accused, stated that he was the same person who had held the collar of the complainant and had a scuffle with the complainant during the incident. On the basis of the evidence of PW 3 and PW 5 the trial Court was pleased to acquit the accused.

4. I am satisfied that the reasoning set out by the trial Court in support of its order of acquittal does not call for reconsideration at the hands of this Court. Hence leave to appeal is refused.

(B.H.MARL